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Work of the Centre for International Crime Prevention: standards and norms

Juvenile justice reform

Report of the Secretary-General

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I. Introduction

1. The present report has been prepared pursuant to Economic and Social Council resolutions 1997/30 of 21 July 1997 and 1998/21 of 28 July 1998. It presents an analysis of the roles, functions and activities of the partners concerned system-wide and of the progress achieved in advancing juvenile justice reform, in line with United Nations policy and instruments. Emphasis has been placed on the need to effect consistent, integrated United Nations policy and to carry out more effective, unified United Nations operational activities consistent with that policy. The report outlines operational and other activities that are being carried out by United Nations entities in line with the Convention on the Rights of the Child (General Assembly resolution 94/25, annex), in particular its provisions on juvenile justice, including those activities being carried out on the basis of in-depth assessments of the technical needs of States parties to the Convention in terms of juvenile justice reform.

2. The following United Nations entities provided comments relating to the preparation of the present report: Office of the United Nations High Commissioner for Human Rights, United Nations Children's Fund (UNICEF), Committee on the Rights of the Child and the World Health Organization (WHO).

II. International instruments relating to juvenile justice: overview, interrelationships, impact

3. The normative bases for juvenile justice reform are United Nations standards and norms protecting the rights of children vis-à-vis justice systems.

4. The first binding international instrument to establish standards relevant to children's rights in the administration of justice was the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI)). That instrument prohibits the imposition of the death penalty on children (art. 6, para. 5). It also provides for children accused of offences to be separated from adults and brought speedily before a judge (art. 10, para. 2 (b)), ensures that child offenders are accorded the same rights as other accused individuals in criminal proceedings (art. 14, para. 1) and requires the provision of criminal procedures that take into account the age and desirability of promoting the rehabilitation of children in conflict with the law (art. 14, para. 4) (E/CN.4/2000/54, para. 3).

5. The Convention on the Rights of the Child entered into force on 2 September 1990. In March 2000, there were 191 States parties to the Convention. Ratification of the Convention commits States parties to adopt all necessary measures to accord to children the rights recognized in the Convention. States parties are thus obliged to align their national laws, procedures and policies with the Convention.

6. The Convention on the Rights of the Child obliges States parties to adopt and implement measures to create the necessary conditions for the effective enjoyment of the rights of children. By ratifying or acceding to the Convention, States recognize the fundamental rights of the child, in law, policy and practice. States must thus provide adequate legal protection and safeguards. The Convention is to be applied in conjunction with other relevant international instruments. In article 41 of the Convention, States are requested to go beyond the Convention, by applying norms most conducive to protecting the rights of the child. While setting forth a set of binding minimum standards, the Convention also calls for a continuing progress and improvement in line with ever-evolving universal values and practice.

7. The non-binding instruments establishing and governing juvenile justice are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (Assembly resolution 45/112, annex) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Assembly resolution 45/113, annex).

8. The above-mentioned instruments define the normative framework for the protection of children's rights through a separate, specialized system of juvenile justice administration that includes delinquency prevention and reintegration of offenders into the community. They cover all processes of justice administration (prevention, adjudication, sentencing, custody, aftercare) and the pre-, in- and post-conflict stages. They differentiate between the law-abiding and law-breaking conduct of young persons in the context of progressive child-rearing and socialization and in the context of the legal responsibilities and rights of young persons under the law. They are designed to safeguard the status, rights, interests, development and well-being of young persons and to ensure their fair

treatment[2] and protection by justice systems. The instruments are aimed at de-criminalization and de-penalization; they require a tempered reaction to and proportionality in respect of youthful law-breaking conduct, and proportionality of sanctioning of youthful offenders, taking into account age and child-developmental factors.[3] The harsh treatment or sanctioning of children with punishment is contrary to the standards.

9. The Beijing Rules reflect the aims and spirit of juvenile justice. They define juvenile justice administration. They are based on the precept of a distinct separation of juveniles from adults, a completely separate system and structure, with specialized operations, staff, services and so on. The aim of the Beijing Rules is to avoid the detrimental effects on young persons, because of their age and vulnerability, of the processes and procedures involved when coming into conflict with the law, in particular in terms of punishment.

10. The Riyadh Guidelines set standards for the prevention of juvenile delinquency. They cover the pre-conflict stage, that is, before juveniles come into conflict with the law and establish a comprehensive set of measures to achieve that purpose by providing an enlightened conceptual framework with respect to youthful offending, differentiating between law-abiding and law-breaking conduct and the consequences thereof. They define the content, scope and approach of delinquency and prevention. The Riyadh Guidelines call for a progressive, child-centred orientation and a child developmental approach to prevention of delinquency as an integral part of the administration of juvenile justice. Special attention is accorded to children who are at social risk. Application of the Riyadh Guidelines requires a concerted delinquency prevention effort that includes a participatory and decision-making role and respect and empowerment for young persons.

11. The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty focus on child custodial detention. They apply to all young persons deprived of their liberty in any form and in any type of facility. They set out principles that provide a universally applicable definition of circumstances under which young persons can be deprived of their liberty, as a last resort, and specify the conditions required to ensure their fair treatment. They advocate the most infrequent use of deprivation of liberty for children, above all in prisons and other closed institutions. They do not recognize pre-trial and prevention detention, but instead advocate abolishing the imposition on young people of imprisonment and the death penalty. They require complete separation of juveniles from adults to ensure protection from harmful influence and risk situations. They establish criteria and procedures for the management and operation of separate facilities for child custody.

12. To promote the establishment and advancement of juvenile justice by means of the above-mentioned instruments is to invite juvenile justice reform. A number of States have undertaken a thorough review of their national systems of administration of justice in order to bring them more in line with the instruments. The instruments have become widely known and have been made available to persons dealing in various capacities with justice affairs. To the extent possible, they have been given prompt attention by States wishing to bring about reform,[4] by, *inter alia*: establishment of separate systems; enactment of major legislation, special codes and acts; creation of new classification schemes to avoid mixing; establishment of national offices for juvenile justice; enhancement of professionalism in the administration of juvenile justice; community-based involvement; and conducting of research as a foundation for programme development, planning and evaluation.

13. The instruments on juvenile justice and the Convention on the Rights of the Child are mutually reinforcing. Standards originating in the United Nations instruments on juvenile justice were incorporated into provisions of the Convention. Some of the rules contained in the instruments were designed specifically to support or guide the interpretation of the rights to be recognized pursuant to the Convention.

III. Machinery in place

14. In considering the activities and progress achieved in juvenile justice reform, it is important to describe the mechanism or machinery in place that promotes and monitors the implementation of instruments governing juvenile justice reform in line with the Convention on the Rights of the Child and its provisions related to juvenile justice.

15. The Committee on the Rights of the Child, consists of 10 independent experts. It is the United Nations treaty body responsible for monitoring progress achieved by States parties to the Convention in their implementation of the Convention and in fulfilling their obligations under the

Convention. The Committee is the highest authority on the interpretation of the Convention.

16. The Committee reports on its activities every two years to the General Assembly through the Economic and Social Council. In accordance with articles 43-45 of the Convention, the Committee reviews reports by States parties on the implementation of the Convention and is responsible for examining the progress made by States, as well as difficulties encountered that may have affected the degree of fulfilment of their obligations under the Convention. The Committee focuses on conformity by States with the provisions of the Convention in terms of national law, procedure and practice. It also pays special attention to advocacy, awareness-raising, education and training in the area of children's rights.

17. The monitoring exercise has been incorporated into the machinery of the Committee that oversees the implementation of the Convention, for example, in relation to the main provisions on juvenile justice (arts. 37, 39 and 40). Work related to the use and application of the standards promote application of the Convention and facilitate the overcoming of difficulties in its implementation. In its review of national situations, the Committee recognizes the complementary nature of human rights and juvenile justice; thus, in overseeing the implementation of the Convention, it promotes the application of the instruments on juvenile justice. The reporting and monitoring processes and procedures involved in the implementation of the Convention place importance on States parties ensuring a periodic assessment and evaluation of progress achieved in its implementation, enabling States parties to review their laws and policies on a regular basis and to focus on areas where further or other action is required so as to improve the situation of children.

18. The Committee recognizes that only through comprehensive and concerted action by all relevant partners will it be possible to ensure the desired action on behalf of children. It stresses the importance of ensuring effective consultation, interaction and cooperation. It makes suggestions and general recommendations to State parties to ensure their full compliance with the Convention. Its concluding observations reflect the main points of the discussion and indicate concerns and issues that require specific follow-up action at the national level. The concluding observations should serve as a guide for governments in setting an agenda for priorities in their implementation of the Convention. When appropriate, the Committee indicates the technical assistance requirements of States parties, determined on the basis of their reports. The Committee advises Governments on carrying out reform in the administration of juvenile justice. The concluding observations are often an important starting point for improvement of the situation and for engaging in valuable dialogue with States in relation to recommendations made by the Committee.

19. Juvenile justice reform is accorded high priority by the Committee. By February 2000, the Committee had examined the initial and periodic reports of some 122 States parties. It has raised questions about the compatibility of the system of administration of justice with principles and provisions of the Convention and of other international instruments and has recommended improvement in the area of juvenile justice in nearly all the reports reviewed so far. In the vast majority of cases, the Committee had concerns regarding the compatibility of the juvenile justice system with the Convention.

20. In its concluding observations relating to approximately 80 States parties, the Committee has recommended technical assistance in the area of juvenile justice reform.[3] It has often advised States parties to seek technical assistance in an effort to develop their capacities to implement children's rights.

21. The coordination panel on technical advice and assistance in juvenile justice was established to enhance, strengthen and coordinate action within the United Nations in the area of juvenile justice, in particular, in field-level activities and via technical assistance. Its members include UNICEF, the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention, the United Nations International Drug Control Programme, the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights, the Committee on the Rights of the Child, other relevant United Nations entities and relevant non-governmental organizations.

22. The Committee on the Rights of the Child may transmit to competent United Nations bodies, through the coordination panel, any reports from States that contain a request or indicate a need for advisory services and technical assistance, together with any observations of the Committee. Accordingly, should a report by a State party and the review process by the Committee reveal any need to initiate reform in the area of juvenile justice, including through assistance by the respective technical advice assistance programmes of the specialized agencies, the State party may request such assistance.

23. At the first meeting of the coordination panel, held in Vienna in June 1998, members stressed the potential of maximizing individual efforts by working together in the same countries and the importance of focusing on projects where, through limited activities, it would be possible to achieve tangible results in areas identified by the Committee for follow-up in juvenile justice. Emphasis was placed on the need to rationalize the use of resources and streamline activities. It was agreed that participating entities would take measures and coordinate action to establish new technical assistance programmes and would reinforce existing programmes in the area of juvenile justice in six countries: Bangladesh, Guatemala, Lebanon, Philippines, Uganda and Viet Nam.

24. The second meeting of the coordination panel, organized by UNICEF and held in New York in March 2000, offered an opportunity to assess the progress made since the last meeting, including in the area of technical assistance, and to design a plan for future activities. Members of the coordination panel shared information on the projects undertaken in the above-mentioned six countries and agreed to respond to requests for technical assistance that could be formulated by States parties to the Convention on the Rights of the Child pursuant to the concluding observations of the Committee on the Rights of the Child. It was agreed that work would focus on assessing the needs in this area in two other countries, Benin and Yemen, and on reinforcing cooperation between partners. The Office of the United Nations High Commissioner for Human Rights has expressed its interest in organizing the next meeting of the coordination panel, which is to be held in 2001.

IV. Work of the Organization to meet the technical needs of States relating to the implementation of the international instruments

25. The present section contains a review of the work accomplished by the United Nations with regard to standard-setting, monitoring and implementation of instruments and technical advisory services, pointing to what still needs to be done and what the major issues and future directions are in this regard.

26. The Special Rapporteur on the sale of children, child prostitution and child pornography considers that it is particularly important for the criminal justice system to focus on the commercial sexual exploitation of children. The justice system can be a forceful ally of children on at least two levels: prevention of child abuse and exploitation, and avoiding secondary victimization of children in its response processes. In her report to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/95 and Corr.1), she notes such problem areas and points to difficulties in law enforcement, prosecution and judicial attitude in respect of both child victims and witnesses. She makes a number of recommendations for improving access to justice by children and stresses the important role of the United Nations in providing technical assistance.

27. The Office of the United Nations High Commissioner for Human Rights provides advisory services and technical assistance in support of human rights mechanisms. Priority is given to requests for cooperation in strengthening national capacity and infrastructure for the promotion and protection of human rights aimed at long-term results. A special focus on juvenile justice can be developed within the context of needs assessment carried out under the technical cooperation programme, which could also involve other United Nations bodies. Specific project activities that may be developed include legislative reform and training, for which the Office has developed a comprehensive programme in the administration of justice, including juvenile justice, focusing on raising awareness about relevant international standards. The programme includes projects in the Philippines and Uganda.

28. The work of UNICEF in the area of children's rights is guided by the principles and standards embodied in the Convention on the Rights of the Child. The UNICEF document entitled "A review of UNICEF policies and strategies on child protection" (E/ICEF/1996/14) outlines the Fund's response to circumstances that cause gross violations of the rights of children.

29. UNICEF continues to press for a strong human rights basis to country-specific work in the context of the United Nations Development Assistance Framework and for the development of relevant human rights indicators in the context of common country assessments. Its 40-50 country offices, most of which are involved at some level with developing or presenting training programmes, cover aspects of juvenile justice. With such tools at its disposal for assessing specific needs in juvenile justice, UNICEF promotes implementation of international standards relating to juvenile justice through technical assistance. The process of mid-term review allows the country offices to consider the issue of juvenile justice reform in relation

to the result of a specific survey or study. Law reform projects are under way in 30 countries. Under article 45 of the Convention, UNICEF is mandated to participate in and submit information to the Committee on the Rights of the Child during its consideration of reports of States parties; to provide expert advice on implementation of the Convention; to submit reports to the Committee on implementation of the Convention; and to consider requests or suggestions made by the Committee for technical advice or assistance to a State party.

30. WHO has recognized the link between juvenile offending and drug abuse and also the need to regard young drug-using offenders as victims in need of help. WHO participates with other United Nations entities in joint programmes in this area. WHO considers that juvenile justice systems need to develop procedures for provision of timely treatment and rehabilitative care for such offenders. In that context, WHO is implementing a project on especially vulnerable young people that covers children and adolescents facing an increased risk of substance use and related problems, including those in conflict with justice systems. A draft document prepared by WHO, in collaboration with UNICEF, the United Nations International Drug Control Programme and the Joint United Nations Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, gives guidance in identifying especially vulnerable young persons and in developing services based on the evidence of a comprehensive assessment.

31. The Centre for International Crime Prevention has established as its priority action to combat transnational organized crime, which it does through its global programmes against trafficking in human beings, transnational organized crime and corruption. In that context, the Centre carries out research and provides legal and technical advisory services.

32. The Centre is engaged in a number of projects that relate to the implementation of international standards in juvenile justice. It is carrying out technical cooperation activities in the following countries: Albania (action plan, with UNDP); Bosnia and Herzegovina (penal code and restorative justice, in cooperation with UNICEF and the European Union, including a project in the Republika Srpska (new laws, with the European Union)); Croatia (alternative measures); Lebanon (law reform, institution-building capacity); Nigeria (rule of law, with the European Union); and Rwanda (genocide procedures).

33. The Centre has developed a *United Nations Juvenile Justice Guide to International Standards and Best Practice* in English, French, Russian and Spanish. It has also produced a model law on juvenile justice, with a commentary, in English and French, for use by international organizations implementing international standards in the area of juvenile justice. The model law is a tool for technical assistance rather than a legal instrument as such, and can be used as a benchmark and an analysis tool for international organizations providing technical assistance in the area of law reform.

34. The Centre is continuing its work in standard-setting and promoting the use and application of existing international instruments, standards and norms in crime prevention and criminal justice and is preparing a revised United Nations compendium of such instruments. The Centre has over the years consistently promoted the rights of children, has contributed to the development of United Nations policy and action and has sought to integrate its work with that of other United Nations entities, both across programmes and system-wide and on various issues, including matters of concern to children. The Centre actively promotes gender mainstreaming in the criminal justice field and deterrence and prevention of violence against women and children. A dimension of this area of work is action against trafficking in women and children, which is carried out within the Global Programme against Trafficking in Human Beings.

35. The Centre continues to function as repository of binding and non-binding United Nations instruments on criminal policy and juvenile justice reform. All the necessary materials are made available to Governments and intergovernmental and non-governmental organizations. The Centre continues to render legal advisory services to Governments on matters of juvenile justice.

36. The Centre is currently focusing its attention on the development of its first set of binding instruments, which are being drafted by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. The Convention and protocols thereto, on smuggling of migrants, trafficking in human beings and firearms, are expected to be adopted by the General Assembly at the Millennium Assembly. It is envisaged that United Nations criminal policy embodied in the non-binding instruments will not only encourage ratification, but also facilitate implementation of the provisions of the Convention, bridging the gap between proscription and fulfilment of new contractual obligations on the part of States.

37. The two protocols under negotiation on trafficking in human beings and on smuggling of migrants and the global programmes of the Centre would contribute to advancing juvenile justice reform. At the same time, the establishment of strong juvenile justice systems worldwide helps make systems more receptive to reducing the incidence of organized crime and the instrumental use and victimization of young persons.

V. Major issues and future directions

38. The Convention on the Rights of the Child has quickly become the international human rights instrument with the largest number of ratifications—191—demonstrating the international community's special commitment to the promotion and protection of children's rights through international standards and norms.[9]

39. International cooperation to promote juvenile justice reform has become a priority within the United Nations system. It is clear that matters of juvenile justice need to be taken into consideration in the broader context of the Convention to ensure application of a holistic approach to guaranteeing children's rights. As the Convention is a multidisciplinary document, covering various aspects of the needs and rights of the child, it is appropriate that relevant entities of the United Nations system should be involved in implementing the provisions in their respective fields of competence in a coherent, policy-oriented and operational way.

40. The important monitoring role of the Committee on the Rights of the Child has recently been facilitated by the technical assistance monitoring activity of the Office of the United Nations High Commissioner for Human Rights. The Committee helps ensure the coordination of technical assistance programmes and promotes the implementation of international standards. It has thus built a major framework within which juvenile justice reform in specific countries may be addressed.

41. The coordination panel could focus on mandates and scope of activities; definition of individual and joint roles and responsibilities; well-targeted complementary and joint activities, grounded in policy and based on needs assessment and impact evaluation; and capabilities and failures in performance.

42. Technical assistance by the United Nations system has an important role to play in coordinating and monitoring the implementation of international standards relating to the administration of justice and in bridging the gap between international standards and implementation at the national level. The implementing role of the organizations of the United Nations is complemented in turn by the monitoring activities of the Committee on the Rights of the Child and the special rapporteurs.

43. The Centre for International Crime Prevention is ready to be of assistance in this regard. Through its global programmes, standard-setting, legal advisory services and technical assistance activities, the Centre will continue to advance and be involved in promoting juvenile justice reform.

44. The coordination panel has identified a limited number of countries on which relevant partners are to concentrate their technical assistance efforts. Whether demonstrable success has been achieved in attending to and meeting those needs and the extent to which relevant partners can continue to absorb such demands, must be realistically assessed.

45. A number of ways to meet the needs of Member States in instituting juvenile justice reform could be considered. Activities of the Centre for International Crime Prevention might include:

(a) At the policy level:

(i) Intensifying efforts to promote the use and application of the juvenile justice instruments and other relevant standards to advance juvenile justice reform on United Nations policy and normative bases;

(ii) Disseminating the instruments to Governments, surveying profiles of juvenile justice systems and determining the obstacles to application of the instruments' provisions;

(iii) Monitoring the progress of and reporting to the Committee on the Rights of the Child on the state of juvenile justice reform;

(iv) Undertaking activities to reduce States' reservations to the Convention on the Rights of the Child and facilitate implementation of its provisions related to juvenile justice;

(v) Providing policy advice and direction to relevant partners involved in Convention-based activities;

(vi) Strengthening ongoing collaborative ties with other United Nations entities;

(vii) Coordinating criminal policy objectives of juvenile justice reform;

(viii) Providing technical advisory services in line with the recommendations of the Committee on the Rights of the Child;

(ix) Launching new activities in line with the United Nations Convention against Transnational Organized Crime and the protocols thereto, focusing on the use of children in organized criminal activity;

(b) At the operational level:

(i) Continuing to develop and carry out projects in cooperation with other entities;

(ii) Continuing to promote children's rights through the three global programmes.

Notes

[1] The instruments use the term "young persons" to include juveniles, children and youth.

[2] See the reports of the Secretary-General on the situation of women as victims of crime (A/CONF.121/16) and on the fair treatment of women by the criminal justice system (A/CONF.121/17 and Corr.1 and Add.1); see also the working paper prepared by the Secretariat on youth, crime and justice (A/CONF.121/7).

[3] See *International Review of Criminal Policy*, special double volume on juvenile justice in international perspective, vols. 39 and 40, 1990 (United Nations publication, Sales No. E.90.IV.3).

[4] See the reports of the Secretary-General on implementation of General Assembly resolutions 40/33, 40/35 and 45/114 and the working paper prepared by the Secretariat on prevention of delinquency, juvenile justice and the protection of the young, prepared for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.144/16).

[5] The report of the Secretary-General on human rights in the administration of justice, in particular of children and juveniles in detention (E/CN.4/2000/54) is now before the Commission on Human Rights. That report examines the role of the United Nations with respect to the delivery of technical advisory services to States parties to the Convention on the Rights of the Child relating to juvenile justice. See also the report of the United Nations High Commissioner for Human Rights, in which the High Commissioner noted that juvenile justice constituted one of the main challenges for the implementation of the Convention (*Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 36* (A/54/36), para. 104).

[6] See General Assembly resolution 53/138, on the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, and Commission on Human Rights resolution 1998/27 and decision 1997/105; see also the major policy issues outlined and the recommendations of the preliminary, interim and final reports of independent experts on enhancing the long-term effectiveness of the United Nations human rights treaty system; see also the related reports (A/44/668, A/CONF.157/PC/62/Add.11/Rev.1, A/44/668 and E/CN.4/1999/74); see further the related report of the Secretary-General (E/CN.4/1998/85 and Add.1 and Corr.1).